

Case No. 4,171.

{25 How. Pr. 467.}²

IN RE DUNN.

Circuit Court, S. D. New York.

Sept., 1863.

HABEAS CORPUS—SUSPENSION—RETROACTIVE EFFECT.

The proclamation of the president of the United States, dated 15th September, 1863, suspending the writ of habeas corpus, appears to be retroactive in its operation. That is, it suspends all proceedings pending upon habeas corpus, which was issued and served prior to the date of the proclamation.

A writ of habeas corpus was issued in the above matter, by Judge Betts, on the 10th day of September, returnable on the 12th, and on the 12th adjourned to the 15th for the purpose of allowing General Canby, the party on whom the writ was served, to make a return, and by order of the court the proceedings were further adjourned to the 19th Instant, and prisoner was ordered to be confined in the Park barracks, city of New York.

Thomas E. Pearsall, for petitioner.

Samuel J. Glassey, opposed.

BETTS, District Judge. The papers in the above matter having been this day laid before the court, and the counsel for the petitioner thereupon moving the court to command the release and discharge of the said John Dunn, by virtue of the said writ of habeas corpus and the proceedings there upon, from his previous imprisonment and detention in the military service, of the United States, and the proclamation of the president of the United States, bearing date September 15, 1863, being argued in objection and bar to said motion by counsel for the military authorities having custody of the prisoner sought to be released by the aforesaid writ of habeas corpus, and counsel for the respective parties being heard and the premises understood by the court:

It is considered and adjudged by the court, that the proclamation aforesaid of the president of the United States is valid and efficient in law, and that by force thereof all authority and right, in this court to act further in the within matter of the said writ of habeas corpus is suspended and stayed.

Whereupon, it is ordered by the court that the motion of the counsel for the petitioner be denied, and that the party to whom the aforesaid writ was directed from this court be acquitted and discharged from further obedience thereto.

² [Reported by Nathan Howard, Jr., Esq.]